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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/807,940	03/24/2004	Paul Spitale	29621/GD0001A	5130
4743	7590	09/10/2007		
MARSHALL, GERSTEIN & BORUN LLP 233 S. WACKER DRIVE, SUITE 6300 SEARS TOWER CHICAGO, IL 60606			EXAMINER CHIN, RANDALL E	
			ART UNIT 1744	PAPER NUMBER
			MAIL DATE 09/10/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/807,940	Applicant(s) SPITALE ET AL.	
	Examiner Randall Chin	Art Unit 1744	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) 18-28 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>09292005</u> . | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

Election/Restrictions

1. Claims 18-28 (method) are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 17 July 2007.

After thorough consideration of Applicant's traversal of the election of species between Fig. 1 and Fig. 2. in the reply filed 17 July 2007, the Examiner hereby **withdraws the election of species requirement** between Fig. 1 and Fig. 2 to the extent that both independent claims 1 and 11 recite that the cushion pad is disposed "in" the receiving portion (claim 1, line 4 and claim 11, line 4). It is noted that the species of Fig. 1 teaches that the cushion pad 24 is actually "**on**" the brush 20 (emphasis added; see Applicant's specification at p. 4, lines 10-11 and Fig. 1) and the species of Fig. 2 teaches that the cushion pad 24 is actually "within" the brush 20 (see Applicant's specification at p. 4, lines 10-11). However, the language of claims 1 and 11 (i.e., reciting that the cushion pad is disposed "in" the receiving portion) can still read on the species of Fig. 1.

Note, an election of species may be required later on in the event that a claim(s) is/are drawn specifically to the species disclosed in Fig. 2.

Accordingly, action upon claims 1-17 now follows.

Drawings

2. The drawings are objected to because in Fig. 5, it appears reference numeral **42** designating the second surface of the cushion pad 24 is misdirected.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

3. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: apertures **43** as recited on p. 4, line 22.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

4. The disclosure is objected to because of the following informalities:

On p. 3, line 16, "lines 7-7" of Fig. 3 appears incorrect (please see Fig. 3).

Compare also with p. 3, line 10, reciting "line 4-4" of Fig. 3.

Appropriate correction is required.

Claim Objections

5. Claims 2, 9-11, 16 and 17 are objected to because of the following informalities:

Claim 2, lines 2 and 3 (both occurrences), it appears "is disposed" should read -being disposed--.

Claim 2, line 2, "the second portion" lacks antecedent basis.

In claims 9 and 10, line 2, should the term "apertures" be replaced with –bristle anchors-- for clarity?

Claim 11, lines 4-5, the recitation ", and the plurality of apertures" does not make sense here.

In claims 16 and 17, line 2, should the term "apertures" be replaced with –bores-- for clarity?

Appropriate correction is required.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1, 4-6 and 8-10 are rejected under 35 U.S.C. 102(b) as being anticipated by France 2 466 216.

As for claim 1, the reference to France 2 466 216 teaches a hair brush comprising a mount or body 4 having a receiving portion at a first end, a cushion pad 2 having an inner surface and an outer surface, wherein the cushion pad is disposed in the receiving portion (Fig. 2), a plurality of wells or bristle anchors 5 disposed "in" (a broad term here) the cushion pad, the bristle anchors 5 having an aperture, and a plurality of bristles 3 tufted into each of the apertures (Figs. 2 and 3).

As for claim 4, a second end of the body includes a handle (Fig. 1).

Art Unit: 1744

As for claim 5, the bristle anchors and the cushion pad are integrally molded (Fig. 2; see English version of France 2 466 216, p. 3, lines 21-23).

As for claim 6 reciting that the bristle anchors and the cushion pad are "connected by a covalent bond", such recitation is deemed drawn towards a method step and methods of forming are not germane to patentability in apparatus claims. In any case, in France 2 466 216, there is still a "bond" between the bristle anchors and cushion pad.

As for claim 8, the cushion pad 2 is constructed from a thermoplastic elastomeric material (Fig. 2; see English version of France 2 466 216, p. 3, lines 21-23).

As for claim 9, the plurality of bristles 3 are tufted in the apertures with adhesive (Fig. 3; see English version of France 2 466 216, p. 3, lines 17-18).

As for claim 10, the plurality of bristles are tufted by force (i.e., a force-fit) in the apertures (see English version of France 2 466 216, p. 3, lines 13-14).

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over France 2 466 216.

As for claim 7 reciting that the bristle anchors are constructed from a propylene material, such material is well known and it is well within the level of ordinary skill to select propylene for its stable properties and the use of such material would have yielded predictable results to one of ordinary skill.

10. Claims 1-4, 6, 8-13 and 15-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Snell 1,957,363 (hereinafter Snell).

As for claim 1, the patent to Snell teaches a hair brush (p. 1, lines 40-43) comprising a back or body 17 having a receiving portion at a first end, a rubber sheet or cushion pad 11 (p. 1, lines 50-52) having an inner surface and an outer surface, wherein the cushion pad is disposed in the receiving portion (Fig. 2), a plurality of ferrules or bristle anchors 12 (Fig. 3) disposed in the cushion pad (p. 1, lines 57-59), the bristle anchors 12 having an aperture, and a plurality of bristles 10 tufted into each of the apertures (Figs. 2 and 3; p. 1, lines 56-60).

As for claim 2, the bristle anchors include a first portion 14 being disposed to the outer surface of the cushion pad and a second portion 15 being disposed to the inner surface of the cushion pad (Figs. 2 and 3).

As for claim 3, the first and second portions of the bristle anchors extend outwardly from the corresponding outer and inner surfaces of the cushion pad (Fig. 2).

As for claim 4, a second end of the body includes a handle (Figs. 1 and 2).

As for claim 6 reciting that the bristle anchors and the cushion pad are "connected by a covalent bond", such recitation is deemed drawn towards a method step and

Art Unit: 1744

methods of forming are not germane to patentability in apparatus claims. In any case, in Snell, there is deemed a covalent bond" between the bristle anchors and cushion pad.

As for claim 8, the cushion pad 11 is constructed from rubber (p. 1, lines 50-52) which is deemed a thermoplastic elastomeric material.

As for claim 9, the plurality of bristles 10 are tufted in the apertures with adhesive (p. 1, lines 58-60).

As for claim 10, at least to an extent, the plurality of bristles are tufted by force (i.e., a force-fit).

As for claim 11, and as stated previously, the patent to Snell teaches a hair brush comprising a body 17 having a receiving portion at a first end, a cushion pad 11 having an inner surface, an outer surface, and a plurality of perforations or apertures (p. 1, lines 50-53), wherein the cushion pad is disposed in the receiving portion (Fig. 2), a plurality of bristle anchors 12 (Fig. 3) disposed in the cushion pad (Fig. 2), the plurality of bristle anchors 12 each having a bore, a first end, a second end, and a waist or groove 16 (Fig. 3), wherein the groove is disposed between the first end and the second end and is adapted to engage with the apertures in the cushion pad (p. 1, lines 60-71), and the bore is oriented generally perpendicular to the groove (Fig. 3), and a plurality of bristles 10 tufted into each of the bores.

As for claim 12, a second end of the body includes a handle (Figs. 1 and 2).

As for claim 13 reciting that the bristle anchors and the cushion pad are "connected by a covalent bond", such recitation is deemed drawn towards a method step and methods of forming are not germane to patentability in apparatus claims. In

Art Unit: 1744

any case, in Snell, there is deemed a covalent bond" between the bristle anchors and cushion pad.

As for claim 15, the cushion pad 11 is constructed from rubber (p. 1, lines 50-52) which is deemed a thermoplastic elastomeric material.

As for claim 16, the plurality of bristles 10 are tufted in the apertures with adhesive (p. 1, lines 58-60).

As for claim 117, at least to an extent, the plurality of bristles are tufted by force (i.e., a force-fit).

11. Claims 7 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Snell.

As for claims 7 and 14 reciting that the bristle anchors are constructed from a propylene material, such material is well known and it is well within the level of ordinary skill to select propylene for its stable properties and the use of such material would have yielded predictable results to one of ordinary skill. Note Snell already teaches the anchors 12 being made from celluloid or other moulded material. Thus, one of ordinary skill could have also used the well known material propylene and the results would have been predictable.

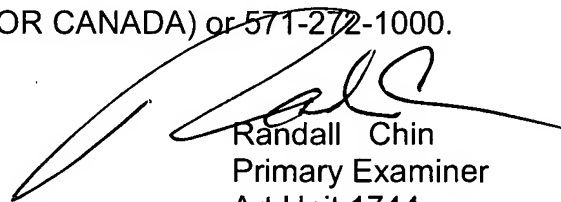
12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Randall Chin whose telephone number is (571) 272-

Art Unit: 1744

1270. The examiner can normally be reached on Monday through Thursday and every other Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gladys Corcoran can be reached on (571) 272-1214. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Randall Chin
Primary Examiner
Art Unit 1744